

OPEN MEETING ITEM
ORIGINAL



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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



ARIZONA CORPORATION COMMISSION

22

DATE: September 27, 2005
DOCKET NO: T-04103A-02-0274 et al.
T-02565A-02-0274
TO ALL PARTIES:

Enclosed please find the recommendation of Assistant Chief Administrative Law Judge Dwight D. Nodes. The recommendation has been filed in the form of an Opinion and Order on:

OCMC, INC.
(PERMANENT WAIVER OF A.A.C. R14-2-1006.A)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

OCTOBER 6, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Open Meeting to be held on:

OCTOBER 18 AND 19, 2005

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931

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BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 OCMC, INC. TO OBTAIN A CERTIFICATE OF
10 CONVENIENCE AND NECESSITY FROM ONE
11 CALL COMMUNICATIONS, INC. DBA
12 OPTICOM TO PROVIDE
13 TELECOMMUNICATIONS SERVICES AS A
14 PROVIDER OF RESOLD INTEREXCHANGE
15 SERVICES AND ALTERNATIVE OPERATOR
16 SERVICES WITHIN THE STATE OF ARIZONA.

DOCKET NO. T-04103A-02-0274
DOCKET NO. T-02565A-02-0274

DECISION NO. _____

OPINION AND ORDER

11 DATE OF HEARING: August 18, 2005
12 PLACE OF HEARING: Phoenix, Arizona
13 ADMINISTRATIVE LAW JUDGE: Dwight D. Nodes
14 APPEARANCES: Mr. Michael Hallam, LEWIS AND ROCA, on
15 behalf of OCMC; and
16 Mr. Jason Gellman, Staff Attorney, Legal
17 Division, on behalf of the Utilities Division of
the Arizona Corporation Commission.

18 **BY THE COMMISSION:**

19 Having considered the entire record herein and being fully advised in the premises, the
20 Commission finds, concludes, and orders that:

21 **FINDINGS OF FACT**

22
23 1. In Decision No. 67444 (December 3, 2004), the Arizona Corporation Commission
24 ("Commission") granted OCMC, Inc.'s ("OCMC" or "Company") application for a Certificate of
25 Convenience and Necessity ("CC&N" or "Certificate") to provide resold interexchange services and
26 alternative operator services ("AOS") in the State of Arizona ("Application").

27 2. Additionally, Decision No. 67444 granted OCMC a six month waiver of the "zero-
28

1 minus”¹ rules as set forth in Arizona Administrative Code (“A.A.C.”) R14-2-1006.A, ordered the
2 Commission’s Utilities Division Staff (“Staff”) to review OCMC’s performance during the six-month
3 waiver period, and provided that OCMC may file for a permanent waiver.

4 3. On April 28, 2005, OCMC filed a Request to Make Waiver Permanent (“Request”)
5 requesting that the temporary waiver granted pursuant to Decision No. 67444 be made permanent at
6 the expiration of the six-month period, verifying that it was unaware of any customer complaints
7 relating to its provision of zero-minus service in Arizona, and indicating that it will file an additional
8 verification shortly before the expiration of the six-month temporary waiver.
9

10 4. According to Staff, OCMC was sent a data request on May 19, 2005, and Staff
11 received OCMC’s responses thereto on May 25, 2005.

12 5. On May 25, 2005, a Procedural Order was issued ordering Staff to file a
13 memorandum, which detailed not only its findings with regard to OCMC’s performance in providing
14 zero-minus services during the past six months, but also its recommendation with regard to granting
15 OCMC’s request for a permanent waiver of A.A.C. R14-2-1006.A.
16

17 6. On May 26, 2005, OCMC filed a Request for Expedited Issuance of Procedural Order,
18 which requested clarification that the temporary waiver will be extended pending the issuance of a
19 Decision on the permanent waiver request.

20 7. By Procedural Order dated May 31, 2005, it was ordered that the temporary waiver
21 granted to OCMC in Decision No. 67444 shall be extended until such time as a Decision is issued by
22 the Commission regarding OCMC’s Request.
23

24 8. On June 3, 2005, OCMC filed a Verification, which indicated that as of June 3, 2005,
25 OCMC was unaware of any complaints made by customers in relation to OCMC’s provision of zero-
26 minus service in Arizona.
27

28 ¹ A “zero-minus call” means a call that is made by dialing a single zero. A.A.C. R14-2-1001.19.

9. On June 17, 2005, Staff filed a Memorandum in response to the May 25, 2005 Procedural Order, which indicated that although OCMC's call processing times are longer than those provided by Qwest, those times are consistent with the information provided in response to prior data requests and have remained constant since the issuance of Decision No. 67444.²

10. Staff further indicated that there have been no formal or informal complaints received by the Consumer Services Section regarding OCMC's provision of zero-minus services during the six month waiver period.

11. Staff recommended that the temporary waiver of A.A.C. R14-2-1006.A granted to OCMC in Decision No. 67444 should be extended indefinitely conditioned upon OCMC's filing, every July and January beginning in January of 2006, a letter of attestation, signed by an executive of the company, indicating that the call processing times for the six months prior to the date of attestation adhere to its current levels. Staff further recommended that OCMC may discontinue filing such letters of attestation in July of 2009 if it has demonstrated the ability to continually and consistently adhere to its established call processing times. Staff indicated, however, that should OCMC fail to file the letters of attestation as recommended, that OCMC should be required to file an application to extend its waiver of the zero-minus rules within forty-five (45) days of the last date upon which a letter of attestation was to be filed with the Commission.

12. On June 24, 2005, a Procedural Order was issued setting a hearing date for August 18, 2005 in order to address the apparent discrepancy between the processing times of OCMC and Qwest. OCMC and Staff were directed to address through testimony and exhibits, at a minimum, the

²

Call Processing Times (in seconds)	OCMC	QWEST
After being connected to the automated operator the average/typical time reported for the caller to be connected with a live operator	10	7.9 – 9.6
After being connected with the live operator the average/typical time reported for the caller to be connected with an emergency service provider	44	25
The total average call processing time reported	54	32.9 – 34.6

1 following issues: how OCMC provisions zero-minus calls and an explanation of why its performance
2 does not appear to be of equal quickness to that of Qwest; OCMC data regarding the accuracy of
3 zero-minus calls and how that accuracy compares to Qwest; whether, and how, OCMC qualifies for a
4 permanent waiver of the Commission's zero-minus rules; whether any other AOS providers have
5 been granted a similar waiver and, if so, based on what criteria; whether OCMC provides AOS in the
6 service territories of any other LECs and, if so, how its zero-minus performance compares to that of
7 the other LECs; and whether the transient nature of AOS end-use customers would tend to minimize
8 the number of complaints from such customers for zero-minus calls that are handled by the AOS
9 provider.
10

11 13. On July 14, 2005, OCMC filed a Request to Vacate Hearing. The Company argued
12 that a hearing was not needed in this matter and a decision on the request for a permanent waiver
13 should be made based on the then-existing record. OCMC claimed that its zero-minus processing
14 times are as quick and accurate as those completed by Qwest, and based on comments made by
15 Commissioners at a prior Open Meeting, OCMC met the requirements for obtaining a permanent
16 waiver of the zero-minus rules (*i.e.*, no customer complaints were received over the past 6 months).
17

18 14. On July 15, 2005, a Procedural Order was issued denying OCMC's request to vacate
19 the hearing. The Procedural Order stated that although "OCMC's insight as to 'what is needed' for a
20 full record is greatly appreciated," the Company and Staff had been directed to file testimony
21 addressing the issues set forth in the June 24, 2005 Procedural Order so that the Commission could
22 determine, pursuant to the requirements of A.A.C. R14-2-1006.B., whether OCMC has "clearly and
23 convincingly demonstrated that it has the capability to process [zero-minus] calls with equal
24 quickness and accuracy as provided by the LEC."
25

26 15. On July 27, 2005, OCMC filed the Direct Testimony of David Hill, the Company's
27 Director of Technical Operations (Ex. A-1).
28

16. On August 5, 2005, Staff filed the Rebuttal Testimony of Del Smith, an Engineer Supervisor with the Commission's Utilities Division Staff (Ex. S-3).

17. On August 12, 2005, OCMC filed the Surrebuttal Testimony of Mr. Hill (Ex. A-2).

18. The hearing was conducted, as scheduled, on August 18, 2005. Mr. Hill testified on behalf of OCMC in support of the permanent waiver. Mr. Smith also testified in support of the requested waiver, subject to the Company's compliance with the reporting requirements described herein.

19. A.A.C. R14-2-1006 provides as follows:

R14-2-1006. Public Safety Requirements

- A. AOS providers shall route all zero-minus calls immediately to the originating LEC.
- B. The Commission may, upon application of the AOS provider, issue a waiver to subsection (A) of this Section if the AOS provider has clearly and convincingly demonstrated that it has the capability to process such calls *with equal quickness and accuracy* as provided by the LEC. (emphasis added)

OCMC's Position

20. Mr. Hill described zero-minus calls as those calls that occur when a caller dials zero and reaches an operator for completion of the call. He stated that the majority of such calls are not placed for emergency purposes, but are made in order to place collect calls, calling card and credit card calls, and third-party billing calls (Ex. A-1, at 2-3). The majority of zero-minus calls are made from payphones, hotels, and motels. Mr. Hill testified that OCMC completes zero-minus calls as an AOS provider in 30 states, and has done so for the past 14 years (formerly as One Call Communications).

21. The Company uses three operator call centers, two in the Dominican Republic (approximately 200 total employees) and one in Indiana (approximately 30 to 35 total employees) (Tr. 13). Mr. Hill described the processing of zero-minus calls by OCMC operators as follows:

1 [U]pon dialing zero, a caller reaches the OCMC automated operator. The
2 automated operator gives instructions to the caller to dial zero for operator
3 assistance. At that point, the call will roll over to a live operator. Upon
4 hearing that the caller has an emergency, the operator will immediately
5 instruct the caller to hang up and dial 911. If the caller indicates that 911
6 was not available or dialing 911 did not work for any reason, the operator
7 will listen to the caller's request, and will connect the caller to the
8 emergency agency requested. Operators are trained not to question the
9 sincerity of an emergency and to connect the caller immediately to the
10 appropriate emergency agency. The operator remains on the line until the
11 call is completed, making sure that he or she is available for any other
12 questions with regard to the caller's origination or the caller's address or
13 phone number. (Ex. A-1, at 4)

9 22. According to Mr. Hill, OCMC does not track separately zero-minus "emergency" and
10 "regular" or "zero-plus" calls (*i.e.*, for collect, third party, calling cards, or travel cards). With respect
11 to the difference between the processing times reported by Qwest and OCMC for zero-minus calls,
12 Mr. Hill stated that he conducted more than 30 test calls to Qwest operators in September 2004 and
13 found that the Qwest calls regularly exceeded its reported 7.9 to 9.6 seconds for being connected to a
14 live operator because zero-minus calls to Qwest require callers to negotiate several initial automated
15 prompts. Mr. Hill claims that, in comparison, OCMC's automated operator script instructs the caller
16 to dial zero within seconds of starting and "given that OCMC uses state-of-the-art systems, OCMC
17 compares favorably to Qwest for this segment of the call" (*Id.* at 7).

18 23. For the next segment of the call (*i.e.*, after being connected with the live operator the
19 average/typical time reported for the caller to be connected with an emergency service provider), the
20 data reported by Staff indicates that Qwest's average is 25 seconds and OCMC's average is 44.6
21 seconds. Mr. Hill contends that the difference in reported times is due to OCMC's inclusion of zero-
22 plus calls. He stated that, based on its experience in the industry for over 10 years, OCMC processes
23 zero-minus emergency calls in a manner that is "as quick as is prudent to maintain accuracy for those
24 calls" (*Id.* at 8). Mr. Hill believes therefore that a permanent waiver of A.A.C. R14-2-1006 is
25 appropriate under the facts presented (Ex. A-2, at 3).

26 24. Through its June 17, 2005 Memorandum, and the testimony presented by Staff witness
27 Del Smith, Staff recommends granting the requested permanent waiver. According to Staff, the
28

1 Commission was aware of the difference between OCMC and Qwest in reported call processing
2 times at the November 23, 2004 Open Meeting, but nevertheless granted a six-month waiver of the
3 zero-minus rule contingent on Staff's tracking of customer complaints during that period. Staff stated
4 that there were no formal or informal complaints received by the Commission regarding OCMC's
5 processing of zero-minus calls during the six-month temporary waiver period. Therefore Staff
6 recommended that an indefinite waiver should be granted, subject to the requirement that OCMC file
7 reports every January and July, beginning in January 2006, attesting that its processing times for the
8 prior six months adhere to the current reported call processing times discussed above. If OCMC fails
9 to maintain that standard for any given six-month period, Staff recommends that the Company be
10 required to file an application within 45 days thereof requesting continuation of the waiver. Staff
11 further recommends that OCMC be permitted to discontinue the semi-annual reports after July 2009
12 if it has continually maintained the processing times discussed above (Ex. S-2).

13 25. Staff witness Del Smith testified that OCMC and Qwest employ comparable facilities
14 and procedures for processing zero-minus calls and, based on its analysis, Staff believes OCMC has
15 the capability to process such calls with an equal level of accuracy and reliability to that provided by
16 Qwest. Mr. Smith stated that Staff believes the difference in the reported call times is due primarily
17 to the fact that OCMC operators remain connected for the duration of such calls instead of dropping
18 off the call after connection to an emergency service provider, and due to differences in how Qwest
19 and OCMC time zero-minus calls (Ex. S-3, at 4).

20 26. On cross-examination, Mr. Smith conceded that the processing times reported by
21 OCMC and Qwest were not "equal" in a strict interpretation sense. However, he indicated that the
22 waiver is justified in this case due to the apparent differences in how the calls are measured (Tr. 38).
23 Mr. Smith also pointed out that when the AOS rules were originally established the AOS industry
24 was fraught with numerous complaints, especially regarding billing issues. He testified that, in recent
25 years, the number of AOS assisted calls has declined significantly due to widespread availability of
26 911 service and other technologies (Tr. 42, 48). Staff does not believe that the public safety would be
27 jeopardized by granting the requested waiver and therefore it recommends approval of the request
28 subject to compliance with the reporting requirements discussed above.

1 27. We agree with Staff that it is reasonable to grant the requested permanent waiver of
2 the zero-minus rules under the specific facts and circumstances presented in this proceeding. As the
3 evidence presented at hearing shows, no formal or informal complaints were received by the
4 Commission regarding OCMC's processing of zero-minus calls during the six-month temporary
5 waiver period previously granted. In addition, the record shows that OCMC and Qwest employ
6 comparable facilities and procedures for processing zero-minus calls and, based on its analysis, Staff
7 believes OCMC has the capability to process such calls with an equal level of accuracy and reliability
8 to that provided by Qwest. Further, it appears that the discrepancy in reported processing times is
9 due to differences in how the calls are measured, as opposed to a deficiency in OCMC's handling of
10 such calls. Based on these facts, we do not believe that the public safety would be jeopardized by
11 granting the requested waiver. Accordingly, granting the requested waiver is consistent with the
12 public interest, contingent upon the Company's compliance with the conditions recommended by
13 Staff as discussed above. However, our grant of the waiver herein should not be interpreted as an
14 indication of what action may be taken in a future case under different facts.

15 CONCLUSIONS OF LAW

16 1. Applicant is a public service corporation within the meaning of Article XV of the
17 Arizona Constitution and A.R.S. §§ 40-281, 40-282 and § 40-285.

18 2. The Commission has jurisdiction over Applicant and the subject matter of the
19 application.

20 3. Staff's recommendations, set forth above, should be adopted.

21 4. OCMC should be granted a permanent waiver of the zero-minus rules, as set forth in
22 A.A.C. R14-2-1006.A, subject to compliance with Staff's recommendations as set forth herein.

23 ORDER

24 IT IS THEREFORE ORDERED that OCMC, Inc. shall be granted a permanent waiver of the
25 zero-minus rules as set forth in A.A.C. R14-2-1006.A, conditioned upon its compliance with the
26 conditions recommended by Staff as set forth herein.

27 IT IS FURTHER ORDERED that OCMC, Inc. shall file reports every January and July,
28 beginning in January 2006, attesting that its processing times for the prior six months adhere to its

1 current reported call processing times, as described above.

2 IT IS FURTHER ORDERED that if OCMC, Inc. fails to maintain its current call processing
3 standards for any of the six-month reporting periods, in accordance with Staff's recommendations
4 OCMC shall have forty-five (45) days to file an application with the Commission to extend the
5 waiver of A.A.C. R14-2-1006.A conditionally granted herein.

6 IT IS FURTHER ORDERED that OCMC, Inc. may seek discontinuance of the reporting
7 requirements recommended by Staff after July 2009 if it has continually maintained its current call
8 processing standards during the entirety of the reporting period required herein.

9 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
11
12

13 CHAIRMAN

COMMISSIONER

14
15 COMMISSIONER

COMMISSIONER

COMMISSIONER

16
17 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
18 Director of the Arizona Corporation Commission, have
19 hereunto set my hand and caused the official seal of the
20 Commission to be affixed at the Capitol, in the City of Phoenix,
21 this ____ day of _____, 2005.

22
23 BRIAN C. McNEIL
24 EXECUTIVE DIRECTOR

25 DISSENT _____

26
27 DISSENT _____
28

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2 DOCKET NO.:

T-04103A-02-0274 and T-02565A-02-0274

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